IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No.20/2001

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's Orders.**

CORAM : **A.P. Lavande,J**
DATE : 25th September, 2006

Heard Mr. Chandurkar, learned counsel for the appellants. None for the respondent.

2. This second appeal is directed against the Judgment and decree passed by the Second Additional District Judge, Akola on 25.7.2000 in Regular Civil Appeal no. 8/94 dismissing the appeal filed by the appellants against the Judgment and decree dated 5th November, 1993 passed by the Second Joint Civil Judge, Senior Division, Akola in Land Acquisition Case No. 69/87. The appellants are the original applicants in Reference under section 30 of the Land Acquisition Act. The appellants and the respondent claimed compensation in respect of the acquired land and reference under section 30 was made. By the Judgment dated 5th November, 1993 the Reference was answered against the applicants and the appeal preferred to the District Court was also dismissed.

3. Mr. Chandurkar, the learned counsel appearing

for the appellants fairly submitted that the appeal before the District Court under section 96 of the Code of Civil Procedure was not maintainable in view of the section 54 of the Land Acquisition Act (hereinafter referred to “The Act”). Placing reliance upon the Judgment of this Court in Collector, Wardha .vs. Sadya Sakharam Bawane (2003(5)Mh. L. J., 503. Mr. Chadurkar submitted that since the appeal before the District Court was not maintainable against the Judgment and decree passed by the appellate Court and appeal was maintainable to this court against the said decree in terms of section 54 of the Act, the appellants would like to prefer appeal to this Court under section 54 of the Act against the Judgment and decree passed by the trial Court.

4. In Sadya Bawane's case (supra), the learned Single Judge of this Court held that in view of section 54 of the Act an appeal against the order passed in Reference under section 18 of the Act would lie only to the High Court and consequently set aside the Judgment and order passed by the lower appellate Court with liberty to file appeal to the High Court subject to question of limitation. Needless to mention that under section 54 of the Act from the decrees passed by any court under the Land Acquisition Act an appeal lies only to the High Court irrespective of the valuation. That being the position, the ratio laid down in Sadya Bawane's case (supra) is squarely

applicable in the present case although in the present case the reference was under section 30 of the Act. I am, therefore, of the opinion that the impugned Judgment and decree passed by the lower appellate Court deserves to be quashed and set aside with liberty to file appeal to this Court against the Judgment and decree passed by the trial Court.

5. In the result, therefore, this Second Appeal is allowed and the impugned Judgment and decree are set aside. The appellants would be at liberty to file appeal against the Judgment and order passed by the trial Court to the High Court subject to the question of limitation. The Second Appeal is disposed of in the aforesaid terms. Having regard to the fact that the respondent has chosen not to put in appearance in spite of service, no order as to costs.

Judge

patle